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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MYRIAM ZAYAS,

Case No. C21-0581-RSM

11 Plaintiff,

ORDER GRANTING DEFENDANT
BOYETT'S MOTION TO DISMISS

12 v.

13 ERIN BOYETT,

14 Defendant.

16 **I. INTRODUCTION**

17 This matter comes before the Court on Defendant Erin Boyett's Motion to Dismiss. Dkt.
18 #15. Plaintiff Myriam Zayas, proceeding pro se, opposes Defendant's Motion. Dkt. #16. Parties
19 have not requested oral argument, and the Court finds that it can rule on the issues without a
20 hearing. Having reviewed Defendant's Motion, Plaintiff's Response, Defendant's Reply, and
21 the remainder of the record, the Court GRANTS Defendant's Motion and DISMISSES Plaintiff's
22 claims.

25 **II. BACKGROUND**

26 Plaintiff brings this action against Defendant Boyett, a kindergarten teacher employed by
27 the Kent School District at Pine Elementary School, for allegedly committing perjury and
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1 withholding evidence from the court while testifying during Plaintiff's dependency hearing
2 involving Plaintiff's daughter. Dkt. #1. On March 16, 2020, Plaintiff's minor child was removed
3 from her care following a "dirty" urine analysis. *Id.* at ¶¶ 9-11. Plaintiff claims that on September
4 28, 2020, Defendant falsely stated under oath that Plaintiff's child missed "many" days of school,
5 often arrived late, demonstrated behavioral issues, and that her mother received food from the
6 school. Plaintiff also claims that on March 12, 2020, Defendant allowed a Child Protective
7 Services ("CPS") social worker to interview the Plaintiff's child without warrant or probable
8 cause. *Id.* at ¶ 18. Plaintiff alleges that her child is still in a foster home as a result of "felony
9 forgery committed by a superior court judge," which Defendant supported through her perjury
10 and failure to provide records that would have exonerated Plaintiff. *Id.* at ¶¶ 13, 22.

13 On April 29, 2021, Plaintiff filed this action against Defendant under 42 U.S.C. § 1983
14 for causing Plaintiff and her child emotional distress, violating her right to familial association,
15 and unlawfully withholding exculpatory evidence. *Id.* at ¶¶ 23-35. Plaintiff also alleges
16 violations under 18 U.S.C. § 241 for conspiracy. *Id.* at ¶¶ 36-41. The Complaint only names
17 Defendant Boyett but explains that "Defendants referred to but not named as Defendants" are
18 state and court officials, Child Protective Services, social workers, and court officials that
19 Plaintiff has named in separate complaints. *Id.* at ¶ 8.

21 III. DISCUSSION

22 A. Legal Standard

24 In making a 12(b)(6) assessment, the court accepts all facts alleged in the complaint as
25 true and makes all inferences in the light most favorable to the non-moving party. *Baker v.*
26 *Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted).
27 However, the court is not required to accept as true a "legal conclusion couched as a factual
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allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* at 678. This requirement is met when the plaintiff “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* The complaint need not include detailed allegations, but it must have “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. Absent facial plausibility, a plaintiff’s claims must be dismissed. *Id.* at 570.

10 B. Analysis

11 1. Immunity for Testifying Witnesses

12 The gravamen of Plaintiff’s complaint is that Defendant’s false statements at a dependency hearing resulted in Plaintiff’s child being kept in a foster home. However, it is well-established that witnesses are “absolutely immune from suits for damages under 42 U.S.C. § 1983 for testimony given at trial, or for testimony given during adversarial pretrial proceedings.” *Burns v. Cty. of King*, 883 F.2d 819, 821–22 (9th Cir. 1989). This immunity extends to government officials testifying at dependency hearings. *See Meyers v. Contra Costa Cty. Dep’t of Soc. Servs.*, 812 F.2d 1154, 1156 (9th Cir. 1987) (finding it “beyond question” that social worker was “entitled to absolute immunity for the testimony he gave during the dependency proceedings and the custody hearing because witnesses, including government witnesses, are immune from liability for their testimony.”) (citing *Briscoe v. LaHue*, 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983)).

26 Here, Defendant testified in her capacity as a public school teacher at Plaintiff’s dependency hearing. She is therefore immune from suit under 42 U.S.C. § 1983. *Meyers*, 812

1 F.2d at 1156. On this basis alone, Plaintiff's claims against Defendant for committing perjury at
 2 the dependency hearing are properly dismissed.

3 2. *Allowing CPS Access to Child without Probable Cause*

4 Plaintiff also claims that Defendant violated Plaintiff's rights by allowing a CPS social
 5 worker to interview Plaintiff's child without warrant or probable cause. Dkt. #1 at ¶ 18.
 6 Plaintiff's claim is deficient since it fails to plead any harm that resulted from Defendant's alleged
 7 action. Moreover, even if Plaintiff's claim were sufficiently pleaded, the Court finds this claim
 8 barred by qualified immunity.

9 Qualified immunity protects "all but the plainly incompetent or those who knowingly
 10 violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). Because qualified immunity is an
 11 immunity from suit rather than a mere defense to liability, this question should be resolved at the
 12 earliest possible stage in litigation. *See Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (per curiam);
 13 *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). The qualified immunity inquiry has two parts:
 14 whether the facts alleged or shown make out a violation of a constitutional right; and whether the
 15 right at issue was "clearly established" at the time of a defendant's alleged misconduct. *See*
 16 *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Courts are permitted to exercise their sound discretion
 17 in deciding which of the two prongs of the qualified immunity analysis should be addressed first
 18 in light of the circumstances in the particular case. *Pearson v. Callahan*, 555 U.S. 223 (2009).

19 Here, Defendant is entitled to qualified immunity under both *Saucier* prongs. As an initial
 20 matter, it is unclear from the face of Plaintiff's complaint what constitutional right she claims that
 21 Defendant violated by allowing CPS to interview Plaintiff's child. Although the complaint
 22 references the First and Fourteenth Amendments, *see* Dkt. #1 at ¶¶ 26-35, Plaintiff cannot show
 23 that Defendant's failure to prevent CPS social workers from interviewing her child violated any
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“clearly established” right held by Plaintiff under either constitutional provision. On the contrary, a reasonable public school teacher would not interfere with CPS’s investigation into a minor child’s situation for the very reason that such interference may violate that child’s rights. Accordingly, the alleged facts do not make out a violation of a constitutional right, nor was any right “clearly established” at the time of Defendant’s alleged misconduct.

3. *Withholding Records*

Plaintiff also brings claims against Defendant for unlawfully withholding exculpatory records—specifically, her child’s attendance records. Dkt. #1 at ¶ 33. Defendant is likely entitled to absolute immunity from this claim as it appears to challenge actions she took as a testifying witness. *Meyers*, 812 F.2d at 1156. However, even if the Court liberally construes this claim as distinct from Plaintiff’s perjury claims that are barred by absolute immunity, the complaint indicates that both Plaintiff and CPS had access to these records—indeed, Plaintiff claims that CPS received the records from an administrative assistant at Pine Tree Elementary School. *Id.* at ¶ 13. Given Plaintiff’s concession that both she and CPS had access to these records, Plaintiff’s claim for unlawful withholding of records fails to state a claim for relief that is plausible on its face. *Iqbal*, 556 U.S. at 678.

4. *Conspiracy Claims*

In addition to her Section 1983 claims, Plaintiff brings claims under 18 U.S.C. § 241 for conspiracy against rights. These claims are readily dismissed given that 18 U.S.C. § 241 is a criminal statute that does not provide a private cause of action.

C. Leave to Amend

Ordinarily, leave to amend a complaint should be freely given following an order of dismissal, “unless it is absolutely clear that the deficiencies of the complaint could not be cured

1 by amendment.” *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987); *see also DeSoto v. Yellow*
 2 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (“A district court does not err in denying
 3 leave to amend where the amendment would be futile.”) (citing *Reddy v. Litton Indus., Inc.*, 912
 4 F.2d 291, 296 (9th Cir. 1990)). Permission to file an amended complaint is typically granted
 5 where claims are dismissed for failure to state a claim. *See Fed. R. Civ. P. 15(a)* (“[L]eave to
 6 amend shall be freely given when justice so requires”).
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8 Here, the Court finds that amendment of Plaintiff’s claims would be futile. Defendant is
 9 immune from suit for perjury and failure to intervene in the CPS investigation. Furthermore,
 10 Plaintiff’s claims for unlawful withholding of attendance records are contradicted by her own
 11 pleading, which indicates that both she and CPS had access to these allegedly withheld records.
 12 Finally, Plaintiff’s conspiracy claims are brought under a criminal statute for which there is no
 13 private cause of action. For these reasons, the Court finds that amendment of Plaintiff’s claims
 14 would not remedy the deficiencies identified in this Order.
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16 **IV. CONCLUSION**

17 Having reviewed Defendant Boyett’s Motion to Dismiss, Plaintiff’s Response,
 18 Defendant’s Reply, and the remainder of the record, it is hereby ORDERED that Plaintiff’s
 19 complaint is DISMISSED without leave to amend. This matter is CLOSED.
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 22 DATED this 24th day of September, 2021.
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 27 RICARDO S. MARTINEZ
 28 CHIEF UNITED STATES DISTRICT JUDGE